

**BEFORE THE DESIGN REVIEW BOARD
OF THE CITY OF MIAMI BEACH, FLORIDA
FILES: DRB19-0392 and 22889**

IN RE: PALAU SUNSET HARBOR, MODIFICATION TO DRB ORDER ON FILE NO. 22889 DATED OCTOBER 2, 2012, SPECIFICALLY DELETING ALL OF CONDITION B.4.C., AND AMENDING CONDITION B.13.B.VI AS SET FORTH IN “SUPPLEMENTAL ORDER” DATED JULY 2, 2019, REGARDING PROPERTY IDENTIFIED AS 1201-1237 20TH STREET, AND “MODIFIED ORDER” DATED JULY 2, 2019, REGARDING PROPERTY IDENTIFIED AS 1201 20TH STREET, PENTHOUSE 4.

PETITION FOR REHEARING

Petitioner Sunset Islands 3 and 4 Property Owners, Inc., and Terry Bienstock (“petitioners” or “neighbors”), pursuant to section 118-9, City of Miami Beach Zoning Code (“zoning code”), petition the City of Miami Beach Design Review Board (“DRB”) for a rehearing on its purported decisions that granted an application for modification of the October 2, 2012 design review approval for the Palau Sunset Harbor development (DRB File No. 22889) (Exhibit A) and state as follows:

1. On or about April 22, 2019 Aaron and Erica Nahmad (“applicants”) filed an application (“application”) requesting DRB approval of two modifications of the 2012 DRB Order dated October 2, 2012. (“modifications”) Exhibit B.
2. The applicants sought the following:
 - a. Deletion of Condition B.4.c which states:

“The rooftop including any canopies, and stairwell or elevator bulkheads, shall be further developed and detailed to include any and all such elements that may be proposed above the main

roof level, and shall be lowered in height to the extent possible, not to exceed a clear height of 8'6" between any finished floor and the underside of the roof slab structure above, subject to the review and approval of staff. No rooftop elements that are not explicitly shown on the roof plans and elevations presented to the Board shall be approved at a later date by staff.

b. Addition of the underlined exceptions to Condition B.13.b.vi.:

Outdoor cooking anywhere on the premises is prohibited except rooftop terraces of the penthouse units and the Association's rooftop pool deck. Kitchen and other cooking odors from non-rooftop terraces and the Association's non-rooftop pool deck will be contained within the premises. All kitchen and other venting shall be chased to the roof and venting systems shall be employed as necessary to minimize or dissipate smoke, fumes and odors.

3. The city provided the required public notice regarding "Petition for: DRB19-0392, 1201 20th Street -- Palau Condominium Penthouse 04" to be heard on July 2, 2019. Exhibit C.

4. The Miami Beach Planning Department staff prepared and presented to the DRB the Staff Report and Recommendation ("staff report") on "DRB19-0392, 1201 20th Street -- Palau Condominium Penthouse 04." Exhibit D.

5. On July 2, 2019, the DRB held a publicly-noticed, quasi-judicial hearing on DRB19-0392, 1201 20th Street -- Palau Condominium Penthouse 04, reviewed and approved the application to modify the 2012 design review approval for the Palau Condominium. Exhibit E and F.

6. On July 15, 2019, the board rendered two orders that granted the requested modifications pursuant to design review criteria set forth in section 118-251 of the zoning code (Exhibit G): a "Supplemental Order" regarding "DRB19-0392 (AKA DRB File No. 22889)" for the property at 1201 20th Street, Penthouse

4 (Exhibit H) (“Supplemental Order”), and a “Modified Order” regarding “File No. 22889” for the property at “1201-1237 20th Street, Palau at Sunset Harbor” (Exhibit I) (“Modified Order”).

7. Section 118-9 permits affected persons who have appeared before the Design Review Board on the matter, or who own property within 375 feet of the applicant’s project, to petition the board for a rehearing. Exhibit J.

8. Petitioner Sunset Islands 3 & 4 Property Owners, Inc., and Terry Bienstock attended, were represented by counsel and participated in both hearings, and are “affected persons” pursuant to section 118-9(a)(2)B.iii.

9. Petitioners seek a rehearing and request the DRB to take additional testimony and to issue a new decision reversing or modifying its previous decisions.

10. Petitioners assert that the board has overlooked matters set forth herein that render its decisions erroneous.

I. THE DRB OVERLOOKED AND FAILED TO CONSIDER THE CITY’S FAILURE TO PROVIDE REQUIRED NOTICE FOR THE DRB DECISION MEMORIALIZED IN ITS MODIFIED ORDER.

11. The only item properly noticed and presented to the DRB relating to the Palau Condominium at the July 2, 2019 DRB hearing was the Supplemental Order: DRB19-0392, 1201 20th Street -- Palau Condominium Penthouse 04. Exhibits C, and E.

12. That notice did not state that the DRB hearing would also apply to any other property, including “1201-1237 20th Street Palau Sunset Harbor.” Exhibit C.

13. The city's public notice only references DRB19-0392, which sought to modify the 2012 DRB approval as it applied to penthouse 4 and no other property. Id.

14. The agenda and city-produced minutes only reference agenda item 16. "DRB 19-0392, 1201 20th Street -- Palau Condominium Penthouse 04," the Supplemental Order. Exhibits E and F.

15. The DRB did not vote on the Modified Order, which addressed DRB File No. 22889 for the property at 1201-1237 20th Street, Palau at Sunset Harbor. Exhibit F.

16. The DRB voted on the Supplemental Order, which was properly noticed to the public and as set forth in the agenda and the minutes.

17. And, the DRB could not vote on the Modified Order because that item was not noticed to the public, neither was it on the agenda, nor was it the subject of the staff report. Exhibit C, E and D.

18. Yet the DRB Chair's designee signed and recorded that Modified Order. Exhibit I.

19. The DRB overlooked and did not consider the city's failure to provide the required notice for the DRB hearing that resulted in the Modified Order.

20. Furthermore, its approval of the Modified Order was without legal authority because the approval lacked the required public notice, not properly before the DRB, and therefore warrants a rehearing.

II. THE DRB DID NOT APPROVE THE MODIFIED ORDER.

21. The DRB did not approve the Modified Order, which purportedly approved the two modifications to the 2012 DRB Order that would apply to properties at 1201-1237 20th Street.

22. The official minutes of the July 2, 2019 DRB hearing show that the board only voted on one motion. Exhibit F.

23. The DRB-approved motion only applied to the Supplemental Order “DRB19-0392, 1201 20th Street—Palau Condominium Penthouse 04.” Id.

24. The minutes of the meeting for agenda item 16 state in their entirety:

“DRB19-0392, 1201 20th Street—Palau Condominium Penthouse 04.

APPROVED w/ Conditions

Motion to Approve w/ Conditions

Moved By: Sam Sheldon

Supported By: Marsh Kriplen

Ayes: Bodnar, Camargo, Delgado, Kriplen, Sheldon

Absent: Steffens, Weinstein

MOTION Passed”

25. Therefore, DRB only approved the Supplemental Order and not the Modified Order, thereby warranting a rehearing to address the validity of the Modified Order.

III. THERE IS NO EVIDENCE IN THE RECORD THAT NON-PENTHOUSE 4 PENTHOUSE OWNERS WHO WOULD BE SUBJECT TO THE DELETION OF CONDITION B.4.C APPLIED FOR THE DELETION.

26. According to section 114-1 of the zoning code, an applicant is “any person seeking to undertake any development as defined in this section.” Exhibit K

27. According to section 114-1 of the zoning code, “Development means the undertaking of any building or construction, including... the making of any material changes in the use or appearance of property or structures... or any other action for which development approval is necessary.” Id.

28. There is no evidence in the record of the DRB hearing on DRB agenda item 16, that a “person seeking to undertake any building or construction” or any other action sought the two modifications for the properties at 1201-1237 20th Street that the DRB purportedly approved through the Modified Order.

29. There is no evidence in the record that each penthouse owner other than the owner of penthouse 4, applied for the modification of the 2012 DRB Order. Exhibit B.

30. There is no evidence in the record that any penthouse owner other than the owner of penthouse 4 is a “person seeking to undertake any building or construction ...for which development approval is necessary.”

31. Only the owner of penthouse 4 provided plans as part of the application showing its proposed construction. And its application is the subject of the Supplemental Order, not the Modified Order.

32. There is no individual penthouse owner claiming to be an applicant that meets the city’s definition of “applicant” regarding the Modified Order. Therefore, without any applicants seeking approval of the Modified Order, any DRB review and approval of the Modified Order (for the property at “1201-1237 20th Street, Palau at Sunset Harbor”) is erroneous.

IV. THE DRB OVERLOOKED AND FAILED TO CONSIDER THE CONDITIONAL USE BASIS FOR CONDITION B.4.c. WHEN IT DELETED THAT PROVISION OF THE 2012 DRB FINAL ORDER.

33. Under Zoning Code Section 118-191, before the DRB could consider Palau’s application for design review, the Miami Beach Planning Board had to grant the Palau developer a conditional use permit to allow a 50,000 square-foot or more mixed-use structure. Exhibit L.

34. On May 22, 2019, the Planning Board granted a conditional use permit to 1201, 1225 & 1237 20th Street -- Palau at Sunset Harbor. Exhibit M.

35. The Planning Board retained jurisdiction over the conditional use permit through Condition 1 of the permit. Id.

36. Condition 2 of the permit requires future owners... “to appear before the Board to affirm their understanding of the conditions listed ...” in the permit. Id.

37. Condition 5 states:

“The applicant shall work with Design Review staff to further modify the proposal to address the following, subject to review and approval of the Design Review Board:

...

e. Reducing encroachment on the line of sight from Sunset Island 4. ...” Id.

38. The applicant and DRB staff, in response to the Condition 5.e., worked together and made revisions to the Palau plans to reduce “encroachment on the line of sight from Sunset Island No. 4.” Exhibit N.

39. Specifically, the staff reported to the DRB that as to Condition 5.e. of the conditional use permit

“Staff believes that this condition is **satisfied**. In comparing the north-south section line of sight diagram, the roof-top elements in the revised plans have been further setback from the north elevation of the building, substantially reducing their visibility as viewed from the rear yards of the residential properties on Sunset Island 4. Further, the applicant has clarified that there is no internal connection between the top floor units fronting the waterway and the roof-top terraces. Staff would also recommend that the Board **not** approve any roof-top structures that are not specifically called out in the plans and elevations provided.” Exhibit K. (emphasis in original).

40. The staff report recommended that the DRB include the following proposed condition in an order approving the 2012 Palau design review application:

The roof-top, including any canopies, and stairwell or elevator bulkheads, shall be further developed and detailed to include any and all such elements that may be proposed above the main roof-level, and shall be lowered in height to the extent possible, subject to the review and approval of staff. No roof-top elements that are not explicitly shown on the roof plans and elevations presented to the Board shall be approved at a later date by staff.” Id.

41. Following the recommendation of staff, the DRB approved Palau’s plans and imposed condition B.4.c with minor changes:

“The roof-top, including any canopies, and stairwell or elevator bulkheads, shall be further developed and detailed to include any and all such elements that may be proposed above the main roof-level, and shall be lowered in height to the extent possible, not to exceed a clear height of 8’6” between any finished floor and the underside of the roof slab structure above, subject to the review and approval of staff. No roof-top elements that are not explicitly shown on the roof plans and elevations presented to the Board shall be approved at a later date by staff.” Exhibit A.

42. Condition B.4.c. is the only condition that implements the Planning Board’s condition of its conditional use approval.

43. The deletion of condition B.4.c removes any response to the planning board’s condition to further modify the proposal to reduce the encroachment on the line of sight from Sunset Island 4. This renders the planning board’s condition to reduce line of sight encroachments meaningless because the only line of sight protection in the 20912 DRB Order has been deleted.

44. The planning board specifically retained jurisdiction over the conditional use permit and required “subsequent owners” to appear to confirm their

understanding of the conditional use permit conditions. This application to eliminate condition B.4.c. by the owner of penthouse 4 of the Palau Condominium, required planning board review because that request sought to eliminate the only DRB condition to its 2012 Order that implemented planning board condition 5.e., which protects the line of sight from Sunset Island 4 from encroachment.

45. The record is silent as to any DRB member, DRB staff, city attorney or applicant discussion on this matter at the July 2, 2019 hearing.

46. The DRB failed to consider this matter when it erroneously nullified a conditional use permit condition which is under the jurisdiction of the planning board.

V. THE DRB OVERLOOKED AND FAILED TO ADDRESS HOW THE ELIMINATION OF CONDITION B.4.c. COMPLIES WITH DESIGN REVIEW CRITERIA 6 and 7 REGARDING COMPATIBILITY WHEN IT DELETED THAT CONDITION OF THE 2012 DRB FINAL ORDER.

47. DRB review criteria in section 118-251(a)(6) (criteria 6) of the zoning code requires that modifications to an existing structure shows a sensitivity to and compatibility with adjacent structures and enhances the appearance of surrounding properties.

48. Section 118-251(a)(7) (criteria 7) requires that the design review approval provides an efficient arrangement of land uses with particular attention to pedestrian sight lines among other things.

49. There is no indication in the staff report, or the Supplemental or Modified orders of the DRB that shows how the elimination of condition B.4.c. of the 2012 DRB Order protects sight lines and shows sensitivity to and compatibility with adjacent structures or surrounding properties.

50. The failure of the board to apply correctly section 118-251(a) (6) and (7) warrants a rehearing.

51. The failure of the applicant to present evidence to the board that it meets the specific requirements of section 118-251(a) warrants a rehearing

WHEREFORE, Petitioners request that the Design Review Board grant the rehearing, take additional testimony and issue a new decision reversing or modifying its previous decision regarding the modification of the 2012 order approving the Palau at Sunset Harbor project (DRB File No. 22889).

Respectfully Submitted,

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